CHANG CHING CHUEN & 3 ORS.

v.

**AIK MING (M) SDN. BHD. & 8 ORS. &
PEKAN NENAS INDUSTRIES SDN. BHD. (INTERVENER)**

HIGH COURT MALAYA, JOHOR BAHRU
TUAN HAIDAR BIN MOHD. NOOR J
[CIVIL CASE NO. 22-120 TAHUN 1991]
16 DECEMBER 1994

COMPANY LAW: *Validity of meeting of board of directors - Whether notice of meeting valid and proper - Whether notice had been served on all directors - Effect of resolutions passed in meeting - Section 355 Companies Act 1965.*

COMPANY LAW: *Third party purchaser of company's land - Whether bona fide purchaser for value without notice of dispute between the shareholders/directors of the company - Whether bound to inquire into internal affairs of company - Rule in Royal British Bank v. Turquand.*

PRACTICE & PROCEDURE: *Application to intervene - Whether interest of intervener effected - Whether just and convenient to determine issue of sale of company's lands as between intervener and the defendants - Order 15 r. 6(2)(b) Rules of the High Court 1980.*

The first defendant company was incorporated by the first plaintiff and the second defendant who were husband and wife. After the first plaintiff's marriage by muslim rites to the second plaintiff, dispute arose which culminated in the second and nineth defendants gaining control of the company by a meeting held on 17 April 1990. A resolution dated 26 May 1990 empowered the second, third and 5th defendants to sell six (6) pieces of land belonging to the company which resulted in a sale to the intervener for RM4.8 million which was paid by the intervener to the defendants. The transfer of the lands to the intervener could not be effected as the first plaintiff obtained an interim injunction. The plaintiffs challenged the validity of the meeting held on 17 April 1990 and the resolution thereunder on the ground that the notice of the meeting was not proper and that the notice had not been received by the first, second and third plaintiffs.

The intervener argued that they were *bona fide* purchasers of the property without notice of the dispute between the directors/shareholders and relied on the rule in *Turquand's* case.

Held:

[1] The notice of meeting was not dated and signed by the secretary of the company and the oral explanation could not be accepted. On the facts, the first, second and third plaintiffs did not receive the notices. The meeting held on 17 April 1990 was therefore ineffective and the resolutions passed were invalid.

[2] The intervener would be allowed to intervene as their interests *vis-a-vis* the sale of the lands would be affected and it would be just and convenient to determine the issue of sale of lands as between the intervener and the defendants as well as between the plaintiffs and the defendants.

[3] On the facts, the intervener had knowledge of the two caveats on the land filed by the first plaintiff and was aware of the danger signal. The intervener chose to proceed with the sale and paid the balance of the purchase price. The speed with which the intervener and

the defendants took to finalise the sale was purposely to deprive the plaintiffs of their interests. Therefore, the intervener was not dealing in good faith and the sale and purchase agreement is null and void.

[Plaintiffs' claim allowed]

Cases referred to:

First Nominee (Pte.) Ltd. v. New Kok Ann Realty Sdn. Bhd. & Anor. [1984] 2 MLJ 76 ***(refd)***
Royal British Bank v. Turquand [1856] 6E & B 327; 119 ER 886 ***(dist)***
Rolled Steel Products Ltd. v. British Steel Corporation & Ors. [1985] 3 All ER ***77 (foll)***

Legislation referred to:

Companies Act 1965, s. 355
Rules of the High Court, 1980, O. 15 r. 6(2)(b), O. 15 r. 8

For the plaintiffs - L. Parthiban (P.K. Nathan with him); M/s. L. Parthiban & Associates
For the defendant - Teh Poh Teik; M/s. Teh Poh Teik & Co.
For the intervener - Harcharan Singh; M/s. Harcharan & Peters

JUDGMENT

Haidar bin Mohd. Noor J:

At the outset of the hearing of this suit the following documents, as agreed by the parties, were produced and marked accordingly:

Bundle of Pleadings	-	**P1**
Ikatan Afidavit	-	**P2**
Ikatan Dokumen Plaintif	-	**P3**
Ikatan Dokumen Defendan	-	**D1**
Ikatan Pencelah	-	**PE1**

This suit was instituted by the plaintiffs as a result of disputes in early 1990 between the first plaintiff and the second to eight defendants arising out of the first plaintiff's involvement and subsequent marriage to Rahimah bte Dollah (second plaintiff). In the result each side sought to take control of the first defendant company *vide* various board meetings and the annual/extraordinary general meetings held by each side.

After gaining control of the first defendant company, the purported board of directors of the first defendant company *vide* resolution on 26 May 1990 purportedly authorised second defendant, third defendant and fifth defendant to sell by public auction or private treaty six pieces of lands referred to in the minutes (see p. 10 of D1). Subsequently, the six pieces of land were sold for RM4.8 million to Pekan Nenas Industries Sdn. Bhd. and the sum of RM4.8 million was paid and received in full. However, the transfer of the six pieces of land could not be effected as the first plaintiff successfully obtained an interim injunction against the said transfer until the dispute between the parties is resolved. I will deal with the action to intervene in the proceedings by Pekan Nenas Industries Sdn. Bhd. and its interests later in my judgment.

The first defendant company (Aik Ming Sdn. Bhd.) was incorporated as a family company with the first plaintiff and the second defendant as the initial subscribers, they being husband and wife respectively. The third, fourth, fifth, sixth, seventh and eight defendants are the children of the first plaintiff and the second defendant. The ninth defendant is the wife of the fourth defendant. The second plaintiff is the second wife of the first plaintiff having

married her according to Muslim rites on 26 May 1990 (see p. 101 of P3). The third and fourth plaintiffs are the brother and sister of the first plaintiff respectively.

The first defendant company's registered office is in Sibu, Sarawak. It was set up in 1962 (see p. 10 of P3). It has an authorised capital of RM2.5 million with 25,000 shares of RM100 each. It has six pieces of land in Mukim of Jeram Batu, District of Pontian, comprising of:

(1) MG 273, Lot 773
(2) MG 272, Lot 877
(3) MG 275, Lot 875
(4) MG 276, Lot 876
(5) MG 274, Lot 874
(6) Geran 16210, Lot 132

(hereinafter collectively referred to as "the said lands")

The said lands originally belonged to the first plaintiff. In 1973 the first plaintiff transferred the said lands to the first defendant company for RM10,000 an acre, the total price being RM366,250 (see pp. 107 & 108 of P3). According to the first plaintiff, thereafter after his children came of age he would transfer some shares into their names and his children did not pay any money either to him or to the first defendant company. However, he got them to sign blank transfer forms back to him and he kept their share certificates.

Shareholding of first defendant company on or before 17 April 1990 (before the alleged take over)

	No. of shares
1. Chang Ching Chuen (first plaintiff)	2
2. Rahimah bte Dollah (second plaintiff)	11,658
3. Chang Ching Hong (third plaintiff)	1,100
4. Yap Poh Eng (f) (second defendant)	40
5. Peter Chang Chee Chi (third defendant)	100
6. Paul Chang Chee Cheng (fourth defendant)	100
7. Amy Chang Chee Chin (f) (fifth defendant)	3,000
8. Pearl Chang Chee Siang (f) (sixth defendant)	3,000
9. Jenny Chang Chee Ning (f) (seventh defendant)	3,000
10. Catherine Chang Chee Jian (f) (eighth defendant)	3,000
	25,000

Shareholding of first defendant company after April, 1990 (after the alleged take over)

	No. of shares
1. Chang Ching Chuen (first plaintiff)	2
2. Rahimah bte Dollah (second plaintiff)	nil
3. Chang Ching Hong (third plaintiff)	1,100
4. Tiong Kim Siong (fourth plaintiff)	1
5. Yap Poh Eng (f) (second defendant)	39
6. Peter Chang Chee Chi (third defendant)	100

7. Paul Chang Chee Cheng (fourth defendant)	100
8. Amy Chang Chee Chin (f) (fifth defendant)	142
9. Pearl Chang Chee Siang (f) (sixth defendant)	3,000
10. Jenny Chang Chee Ning (f) (seventh defendant)	3,000
11. Catherine Chang Chee Jian (f) (eighth defendant)	3,000
12. Ong Li Mei (f) (ninth defendant)	14,516
	25,000

In their statement of claim, the plaintiffs are seeking various prayers from the Court but after the hearing of this suit the plaintiffs withdrew some of the prayers, especially in respect of the alleged meetings subsequently held in Sibu to counter the resolutions passed by the second, third, fourth, fifth and ninth defendants. Be that as it may, in considering this suit the first issue for the Court to consider is in respect of the alleged meeting of the board of directors on 17 April 1990.

Meeting of the Board of Directors on 17 April 1990 in Singapore

At this board meeting attended by second and third defendants, it was resolved:

1. That the share certificate numbers 55, 56, 79, 80, 83, 84, 85, 86, 87, 88, 91, 92, 90, 93, 94, 95, 96 and 97 be and hereby declared null and void.

2. That the following transfer of shares in the Company be and they are hereby approved and that the common seal of the Company be affixed to the new certificates.

Serial No. of old shares	Transferer	Transferee	Serial No. of new shares
55, 56, 79 and 80	Amy Chang Chee Chin	Ong Li Mei	99
83, 84, 85, 86, 87, 88, 91 and 92	Peter Chang Chee Chi	Ong Li Mei	101
90, 93, 94, 95, 96 and 97	Paul Chang Chee Cheng	Ong Li Mei	100

3. That pursuant to Art. 69(a), Rahimah bte Dollah (I/C No. 5814759) of 26 bt. Jalan Pontian, Pekan Nenas, Johor, Malaysia shall cease to be a Director of the Company with effect from 17 April 1990.

4. That pursuant to Art. 81, the following be and they are hereby appointed Directors of the Company with effect from 17 April 1990:

Paul Chang Chee Cheng
Amy Chang Chee Chin
Ong Li Mei

Before 17 April 1990, the directors of the first defendant company were:

1. Chang Ching Chuen
2. Rahimah bte Dollah

3. Yap Poh Eng
4. Chang Ching Hong
5. Peter Chang Chee Chi

The second defendant, who is also the secretary, claimed that a notice of the meeting of the board to be held on 17 April 1990 (see p. 1 of D1) was issued to all the directors. However, the first plaintiff (PW1), second plaintiff (PW2) and third plaintiff (PW3) gave evidence that each of them had not received the notice referred to. Quite apart from the non-receipt of the said notice by PW1, PW2 and PW3, a look at the notice as on p. 1 of D1 clearly showed that the notice was not dated and signed by the secretary (i.e., DW3). Neither was the signature even printed as provided by Art. 110. According to DW3, she did sign and put a date on the said notice and the notice as in p. 1 of D1 was a file copy only and it was not signed and dated or even printed. Apart from her oral explanation she did not adduce any other evidence to support her oral explanation about the notice (p. 1 of D1) that was undated and unsigned. Now the question for me to consider is whether her explanation can be accepted by the Court.

It is clear by Art. 110 (p. 10 of P3) that the signature to any notice to be given by the first defendant company may be written or printed. I am of the view that it is rather difficult to accept her oral explanation as it would appear to be rather odd for her to sign on all the copies except the file copy! In fact she needed only to print her name on the file copy of the notice to meet the requirement of Art. 110. In the circumstances the notice at p. 1 of D1 could not, in my view, constitute a proper notice. However, even assuming that the notice was duly dated and signed as claimed by DW3, the next issue I have to consider is whether the notice had been duly served on all the directors.

According to Art. 89, the secretary shall summon a meeting of the Directors by notice served upon the several directors. Article 107 stated "Any notice sent by post shall be deemed to have been served on the day after the envelope or wrappers containing the same is posted and in proving such service it shall be sufficient to prove that the envelope or wrappers containing the notice was properly addressed and put in the post office box".

PW1, PW2 and PW3, who were the Directors at the material time in their evidence denied receipt of the notice and the agenda (see p. 2 of D1) whereas DW2 gave evidence that he did receive the notice and the agenda (pp. 1 and 2 of D1). DW2 stopped there without producing the relevant documents to show that the notice and the agenda were in fact issued and sent to the directors for the meeting on 17 April 1990. If the notice and the agenda had been sent to all the directors, I am of the view that there could be no reason for PW1, PW2 and PW3 not to attend the Board meeting in view of the agenda to be discussed and passed at the board's meeting. In fact, it is the more reason for PW1, PW2 and PW3 to attend the said board meeting as they could very well defeat the resolutions proposed thereat in view of their majority shareholding in the first defendant company at the material time. In view of the denial of the receipt of the notice and the agenda by PW1, PW2 and PW3, and I do not see any good reasons to disbelieve them, it is for the defendants to show that such notice and agenda were served on PW1, PW2 and PW3. In fact the defendants failed to so prove and interestingly enough their Counsel did not press hard on this issue when cross-examining PW1, PW2 and PW3.

As I am of the view that the notice was undated and unsigned and for that matter not even printed, it cannot therefore constitute a valid notice and further held that the notice and the agenda were not received by PW1, PW2 and PW3, it follows therefore that the board of directors meeting on 17 April 1990 was ineffective and the resolutions passed were invalid.

However, power is given to the Court to make a validating order in respect of such irregularities under s. 355 of the Companies Act 1965 either on the application of the defendants or on its own motion. There has been no such application by the defendants. The next question is whether the Court on its own motion should exercise such power. The absence of proper notice and in any event the non-receipt of it by PW1, PW2 and PW3 in this case that resulted in the passing of resolutions to the prejudice of PW1, PW2 and PW3 to my mind caused injustice to them and in the circumstances it is not proper for the Court to make a validating order and hence I decline to make such an order. (See *First Nominee (Pte.) Ltd. v. New Kok Ann Realty Sdn. Bhd. & Anor*. [1984] 2 MLJ 76).

As I rule that the board of directors meeting of 17 April 1990 was invalid and therefore of no effect and similarly the resolutions passed thereunder, it follows that the subsequent meetings of the board of directors where the purported new directors took part in the subsequent meetings could not possibly be valid and similarly also in respect of the various resolutions passed thereunder. In my view, the *status quo* of the shareholding prior to 17 April 1990 should be maintained.

Intervener's Case

It is not disputed that Pekan Nenas Industries Sdn. Bhd., intervened principally for the purpose of setting aside the injunctive order obtained by PW1 (see encl. 19). Alternatively the intervener prayed for the variation of the injunctive order to present for registration the memorandum of transfer of the said lands in favour of it. The application to intervene, by consent, was allowed by the learned Judge then (see p. 2 of encl. 51). Subsequently upon hearing the application of the intervener as well as the defendants to set aside the injunctive order and /or variation of it the learned Judge in a written judgment dated 21 April 1992 dismissed the application with costs.

In its application to intervene (encl. 19) it would seem clear that the intervener applied for leave to firstly intervene in these proceedings and secondly, in the event leave is granted, to apply for an order to set aside the injunction order and/or a variation of the injunctive order obtained by PW1. However, the learned Judge hearing the application of the intervener did not make a specific order that the intervener be named as a party to these proceedings as provided under O. 15 r. 6(2)(b) of the Rules of the High Court, 1980 ('RHC') and as a result consequential actions under O. 15 r. 8 of RHC were not taken. Be that as it may, it would appear that in view of prayer (p) of the statement of claim of the plaintiffs seeking a declaration that the sale of the said lands to any third party (i.e. the intervener) as null and void and no effect on the first defendant company, the interests of the intervener *vis-a-vis* the sale of the said lands would be affected and in my view it would be just and convenient to determine as between the intervener and the defendants as well as between the plaintiffs and the defendants to the issue of the sale of the said lands. In any event, the plaintiffs did not raise the issue of the status of the intervener at the time of the hearing of this suit. Therefore the intervener should be allowed to be heard.

The intervener in what I would say trying to resist the prayer sought by the plaintiffs for a declaration that the sale and purchase agreement between it and the first defendant company be declared null and void and of no effect relied on the doctrine that it is a *bona fide* purchaser for value and had no notice of the dispute between the shareholders/directors of the first defendant company, and even if it had notice it is not bound to inquire into the internal affairs of the first defendant company. Further, the Counsel for the intervener contended that the issue of the conspiracy of the intervener with the second to ninth defendants and the intervener was not a *bona fide* purchaser could not be relied by the

plaintiffs as they were not so pleaded by the plaintiffs. As the intervener was not ordered to be made a party, such contention cannot in the circumstances be accepted as no consequential action was taken under O. 15 r. 8 of RHC. Hence, it is just and proper that all evidence available should be considered by the Court in determining the claim of the intervener that it is a *bona fide* purchaser and that it had no notice of the dispute between the shareholders/directors of first defendant company.

It is true that the principle that a person dealing with a company does not need to enquire into the regularity in the internal affairs and proceedings of the company and may assume that all is being done regularly (See *Royal British Bank v. Turquand* [1856] 6E & B 327; 119 ER 886). However, this principle is not absolute and unqualified when Slade LJ in *Rolled Steel Products Ltd. v. British Steel Corporation & Ors.* [1985] 3 All ER at p. 77 said:

> This connection might well have been unanswerable if the rule in *Royal British Bank v. Turquand* [1856] 6 E & B 327; [1843-60] All ER 435 were an absolute and unqualified rule of law, applicable in all the circumstances. But, as the statement of the rule quoted above indicates, it is not. It is a rule which only applies in favour of persons dealing with the company in good faith. If such persons have notice of the relevant irregularity, they cannot rely on the rule.

The intervener entered into a sale and purchase agreement ('SPA') with the first defendant company in respect of the said lands on 3 December 1990 (see p. 24 of PE1). It is then necessary for me to consider the facts that led to the execution of SPA by the intervener as to whether it is a *bona fide* purchaser and had knowledge of the irregularity of the internal affairs of the first defendant company. The intervener's evidence was given by Dato' Tan Eng Boon, the chairman of the intervener company (IW1).

According to IW1, he dealt with a broker named Mr. Quek in respect of the sale of the said lands through one Mr. Lai. The price for the said lands was initially RM6 million but after negotiations with the 'vendors' through the telephone it was agreed for RM4.8 million. Thereafter he instructed his manager, one Mr. Phang to pay RM100,000 in cash in Singapore on 26 October 1990 for the option. As regards, the deposit of 10%, it was agreed at a figure of RM668,000 after negotiations between the parties as according to IW1 the figure '668' means "prosperous all the way". After the payment of RM100,000 the intervener appointed M/S K. H. Choo, as its solicitors. Interestingly enough the intervener chose not to call Mr. Quek or Mr. Lai as its witness to support the *bona fides* of its transaction with DW2 and DW3 and that it had no knowledge of the irregularity in the first defendant company. Would not the evidence of Mr. Quek and/or Mr. Lai be relevant to support the claim of the intervener? No reasons were advanced by the intervener why Mr. Quek and/or Mr.Lai were not called. In that event an adverse inference against the intervener should be drawn.

According to Mr. K. H. Choo (PW5), who acted for the intervener, a search was made with the Land Administrator in respect of the said lands sometime in October 1990 through his clerk and there was no encumbrance then. PW5 claimed that he came to know of the caveat sometime in November 1990 (referring to the caveat dated 6 September 1990 as on p. 38 of P3 and I shall hereinafter refer it as "the first caveat"). No particulars of the search were taken down. I have my reservations whether such a search was indeed carried out by PW5's firm as it is clear that the first caveat was filed in September 1990 as the record showed in and if indeed the search was made, the first caveat would have been disclosed. Be that as it may, PW5 disclosed to IW1 of the first caveat sometime in November 1990 when he allegedly come to know of it. From the contents of the first caveat that was filed, it clearly showed that it was filed by PW1 in his capacity as the chairman and managing director of first defendant company and the ground was stated:

> The title deeds of the said lands have been lost or mislaid or taken away by unauthorised person or persons.

In spite of the knowledge of the first caveat and the person in the name of PW1 purportedly acting for the first defendant company as chairman and managing director, IW1 chose not to contact PW1 about the caveat. Even though his solicitors PW5 said that the first caveat could be removed, it should at least dawn upon him to be cautious and alert in dealing with the purchase of the said lands as the ground stated in support of the first caveat revealed at least "an element of theft". It is only appropriate that IW1 should contact PW1 regarding the first caveat filed and knowing of the position of PW1 as disclosed therein, would not it be prudent on his part to not only deal with DW2 and DW3 but with PW1 as well? However, throwing the caution to the wind IW1 decided to proceed with the execution of SPA on 3 December 1990 knowing fully well of the encumbrance, i.e., the first caveat. Though the first caveat could be easily removed as claimed by PW5, is it not also prudent on the part of IW1 to see that the first caveat is removed first before executing the SPA thereby without getting the intervener deeply in the transaction with high risks especially millions of dollars are involved. At the very least there should be a provision in relation to the removal of the first caveat inserted in SPA to protect the interests of the intervener. In any event the SPA stipulates that the sale of the said lands is free from encumbrance which was not true. In spite of the knowledge of the first caveat which means that there was encumbrance on the said lands, the intervener chose to proceed with the execution of the SPA. The pertinent question to ask is why the hurry to execute the SPA? The irresistible and logical conclusion is that the intervener was getting a good deal and DW2 and DW3 and the other defendants were prepared to sell the said lands quickly at a cheaper price in order to deprive the plaintiffs of the benefits of the sale of the said lands - with the co-operation of IW1! It is rather surprising that the intervener was even allowed to take possession of the said lands and expended considerable sum of money on them even though the sale was not completed yet!

Next, after the execution of SPA and before the sum of S$2,652,744 in cash was paid in Singapore on 15 March 1991 IW1 knew of another caveat filed on 19 December 1990 ('the second caveat'). PW5 informed IW1 of the second caveat and also the solicitors acting for the purported vendors. In spite of the knowledge of the caveats the intervener's solicitors forwarded the balance sum of RM4,132,000 to the solicitors purportedly acting for the first defendant company and the said sum was returned subsequently and in turn PW5 returned the money to the intervener. Instead of aborting the sale, and asking for the refund of the deposit money, IW1 decided to go on his own to proceed with the completion of the sale in spite of knowing the "danger signals" and thought it fit to pay a sum of S$2,652,744 (equivalent to RM4,132,000) in cash in Singapore. No doubt a receipt was obtained but then there would be a danger that the money might not go into the coffer of the first defendant company and this had been proven true when DW3 admitted that the money was loaned to the shareholders. It could very well be argued that it should not be the concern of the intervener as to how the money was utilised but then it showed the conduct of the intervener as to its claim that it was a *bona fide* purchaser and had not notice of the irregularity in the affairs of the first defendant company.

The statutory declaration in support of the second caveat clearly showed the internal dispute in the management of the first defendant company and I quote:

> In view of the recent disputes between me and other shareholders, I have good reasons to believe that the other shareholders in the said company are making attempts to dispose off the landed assets of the said company without my knowledge, consent and approval.

I see no good reasons therefore for the intervener to proceed with the final payment of the purchase price of the said lands other than to proceed with all haste in tandem with the second to ninth defendants so that the intervener hoped to get the titles registered in its name and thereby getting indefeasible titles. As I said earlier the speed with which the intervener and the defendants took to finalise the sale of the said lands with the co-operation of their solicitors was purposely to deprive the plaintiffs of their interests. If IW1 had contacted PW1 he knew fully well that the transaction would in all probability be aborted and hence, with the co-operation of DW2 and DW3, tried to get the titles registered in the intervener company's name and thereby hoped to defeat the plaintiffs' claim. This is further borne out by the fact that the intervener even tried to register the registration of the transfer of the said lands in the face of an injunctive order.

I am of the opinion that the conduct of IW1 before as well as after the execution of the SPA would seem clearly to show that the intervener was not a *bona fide* purchaser who acted without the knowledge of the irregularity in the affairs of the first defendant company. In the circumstances the intervener, in my view, cannot rely on the authority of *Turquand's* case as it was not dealing in good faith with the first defendant company as it had notice of the irregularity and I accordingly declare the SPA as null and void and of no effect. It is open to the intervener to take action against the second to ninth defendants personally for recovery of the money paid and damages, if any, as they were the ones who pocketed the money.

Accordingly, I would make the following orders:

1. The directors meeting of first defendant company in Singapore on 17 April 1990 and the resolutions passed thereunder are invalid, null and void and of no effect.
2. All subsequent meetings of the directors and the resolutions passed thereunder following from the directors meeting on 17 April 1990 are similarly invalid, null and void and of no effect.
3. The *status quo* of the shareholders before 17 April 1990 be maintained.
4. The SPA and the memorandum of transfers in respect of the said lands are invalid, null and void and of no effect on the first defendant company.

I would as a result also make the following consequential orders:

1. The plaintiffs be at liberty to apply for rectification of the share register of the first defendant company with the Registrar of Companies.
2. The interveners and/or the defendants do forthwith return to the plaintiffs the six original documents of titles of the said lands.
3. The second, third, fourth, fifth and ninth defendants do forthwith return to the plaintiffs the common seal, cash books, bank statements, vouchers, all cheque books and all files relating to general correspondence register of share book of first defendant company.
4. Damages to be assessed by the Deputy Registrar on a date to be fixed by him.

I also order that the second to ninth defendants and the intervener do pay the costs of the proceedings to plaintiffs.